

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF PUBLIC HEARING ON
of ARM 17.30.1301, 17.30.1303,)	PROPOSED AMENDMENT AND
17.30.1304, 17.30.1322,)	REPEAL
17.30.1323, 17.30.1341,)	
17.30.1351, 17.30.1361, and)	
the repeal of ARM 17.30.1332)	(WATER QUALITY)
pertaining to Montana)	
Pollutant Discharge)	
Elimination System Permits)	

TO: All Concerned Persons

1. On November 18, 2002 at 9:00 a.m., in conjunction with the hearing for MAR Notice No. 17-174, the Board of Environmental Review will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., November 6, 2002, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email ber@state.mt.us.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.30.1301 PURPOSE AND SCOPE (1) The purpose of this subchapter, taken together with ~~subchapter~~ subchapters 11, 12, and 14, is to establish and implement one common system for issuing permits for point sources discharging pollutants into state waters, and is intended to allow the board and department to administer a pollutant discharge permit system which is compatible with the national pollutant discharge elimination system as established by the US environmental protection agency pursuant to section 402 of the federal Clean Water Act, 33 USC 1251, et seq.

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: In MAR Notice No. 17-174, which the board is issuing in conjunction with this rule notice, the board is proposing to create a new subchapter 11 in ARM Title 17, chapter 30, for the purpose of codifying water quality rules governing discharges of storm water. This rule notice proposes changes to subchapter 13 to facilitate moving most of the storm water rules to the proposed new subchapter 11.

Current storm water rules are contained in ARM Title 17, chapter 30, subchapter 13, but are not fully spelled out there. Instead, subchapter 13 incorporates by reference federal storm water requirements at ARM 17.30.1303, and codifies other federal storm water requirements in part at ARM 17.30.1332. The current storm water rules are referred to as the "phase I" rules.

Creation of a new storm water subchapter, rather than simply incorporating the federal rules by reference or amending subchapter 13, is necessary to make the rules easier for the regulated community to read and apply.

In MAR Notice No. 17-174, the board is also proposing to promulgate new storm water regulations that will conform to recent federal rules applicable to storm water discharges from certain municipalities and small construction activities. The new storm water rules are referred to as the "phase II" rules. The phase I and II federal rules have been adopted by the U.S. environmental protection agency (EPA), and are found at 40 CFR Part 122. The board is required by federal law to adopt storm water regulations that are not less stringent than the EPA storm water rules. The rules proposed in MAR Notice No. 17-174 and in this rule notice are necessary to prevent impacts to surface water from storm water runoff. Storm water runoff from lands modified by human activities can harm surface water resources and can cause or contribute to exceedances of water quality standards. Storm water runoff may contain or mobilize high levels of contaminants, such as sediment, suspended solids, nutrients (phosphorus and nitrogen), heavy metals and other toxic pollutants, pathogens, toxins, oxygen-demanding substances and floatables.

The storm water requirements in MAR Notice No. 17-174 and in this rule notice would be implemented through permits issued under the Montana pollutant discharge elimination system (MPDES). The proposed amendments to ARM 17.30.1301 clarify that subchapters 11 (storm water discharges), 12 (MPDES standards), 13 (MPDES permits) and 14 (pretreatment) establish a common system for issuing permits for point sources discharging pollutants into state waters. The

amendments are necessary to assist the regulated public in locating applicable requirements for discharges.

17.30.1303 INCORPORATIONS BY REFERENCE (1) through (6) remain the same.

(7) The list of incorporations by reference follows:

<u>ARM 17.30...</u>	<u>33 CFR ...</u>	<u>Description of Regulation</u>
(a) 1310	153.101 et seq.	Control of pollution by oil, and hazardous substances, discharge removal.
<u>ARM 17.30...</u>	<u>40 CFR ...</u>	<u>Description of Regulation</u>
(b) 1310	Part 300	The national oil and hazardous substances pollution contingency plan.
(c) <u>1322</u>	<u>122.26(c)(1)</u>	<u>Requirements for individual permit applications for storm water discharges.</u>

(c) through (as) remain the same, but are renumbered (d) through (at).

AUTH: 75-5-304, MCA

IMP: 75-5-304, 75-5-401, MCA

REASON: The proposed amendments to ARM 17.30.1303 incorporate by reference federal requirements at 40 CFR 122.26(c)(1). The federal requirements pertain to application procedures for MPDES permits for storm water discharges. Individual permits for storm water discharges would continue to be processed under subchapter 13 rather than the new subchapter 11 that is proposed in MAR Notice No. 17-174. The federal application procedures at 40 CFR 122.26(c)(1) are applied in this subchapter in the amendments to ARM

17.30.1322, which are discussed below. Incorporation of the federal requirements in this rule is necessary in order to apply them in ARM 17.30.1322.

17.30.1304 DEFINITIONS In this subchapter, the following terms have the meanings or interpretations indicated below and shall be used in conjunction with and are supplemental to those definitions contained in 75-5-103, MCA.

(1) through (59) remain the same.

~~(60) "Storm water point source" means a conveyance or system of conveyances (including pipes, conduits, ditches, and channels) primarily used for collecting and conveying storm water runoff and which:~~

~~(a) is located at an urbanized area as designated by the Bureau of the Census according to the criteria in 39 Federal Register 15202 (May 1, 1974); or~~

~~(b) discharges from lands or facilities used for industrial or commercial activities; or~~

~~(c) is designated under ARM 17.30.1332(4). Conveyances that discharge storm water runoff combined with municipal sewage are point sources that must obtain MPDES permits, but are not storm water point sources.~~

~~(61) "Storm water discharge, Group I" means any storm water point source which is:~~

~~(a) subject to effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards;~~

~~(b) designated under ARM 17.30.1332(4); or~~

~~(c) located at an industrial plant or in plant associated areas. "Plant associated areas" means industrial plant yards, immediate access roads, drainage ponds, refuse piles, storage piles or areas, and material or products loading and unloading areas. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots.~~

~~(62) "Storm water discharge, Group II" means any storm water point source not included in (61) of this rule. (See ARM 17.30.1322(7)(j)(i) for exemption from certain application requirements.)~~

(63) through (66) remain the same, but are renumbered (60) through (63).

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: The proposed amendments to ARM 17.30.1304 delete three definitions. The definition for "storm water point

source" is proposed to be deleted because it is not used in the federal rules, these rules, or in the new subchapter 11. The definitions for "storm water discharge, Group I" and "storm water discharge, Group II" are proposed to be deleted because the terms are no longer used either in the federal or state storm water rules. Deleting these definitions is necessary to eliminate superfluous rule language, and to be consistent with federal requirements.

17.30.1322 APPLICATION FOR A PERMIT (1) through (5) remain the same.

(6) All applicants for MPDES permits shall provide the following information to the department, using the application form provided by the department (additional information required of applicants is set forth in ~~(7)-(12) of this rule through (14))~~):

(a) through (f)(ix) remain the same.

(g) a topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area ~~(group II storm water discharges, as defined in ARM 17.30.1304(62), are exempt from the requirements of this subsection)~~;

(h) remains the same.

~~(i) for group II storm water dischargers (as defined in ARM 17.30.1304(62) only, a brief narrative description of:~~

~~(i) the drainage area, including an estimate of the size and nature of the area;~~

~~(ii) the receiving water; and~~

~~(iii) any treatment applied to the discharge.~~

(j) through (m) remain the same, but are renumbered (i) through (l).

(7) Existing manufacturing, commercial, mining, and silvicultural dischargers applying for MPDES permits shall provide the following information to the department, using application forms provided by the department:

(a) through (i) remain the same.

~~(j)(i) an applicant that qualifies as a Group II storm water discharger under ARM 17.30.1304(62) and 17.30.1332 is exempt from the requirements of (6)(g) and (7) of this rule, unless the department requests such information;~~

~~(ii) for the purpose of (7)(c) above, storm water point sources may estimate the average flow of their discharge and must indicate the rainfall event and the method of estimation that the estimate is based on;~~

~~(iii) the department may require additional information under (7)(m) below, and may request any Group II storm water dischargers to comply with this section (7).~~

(k) through (m) remain the same, but are renumbered (j) through (l).

(8) through (10)(h) remain the same.

(11) Dischargers of storm water from facilities or activities that are listed in [NEW RULE III(1)(a) through (f), MAR Notice No. 17-174] must apply for an individual permit, or seek coverage under a storm water general permit as provided for in subchapter 11. Individual permit applications for small municipal separate storm sewer systems are subject to the provisions stated in [NEW RULE VIII(3) through (28), MAR Notice No. 17-174].

(12) Dischargers of storm water associated with industrial, mining, oil and gas, and construction activity, shall apply for an individual permit as stated in 40 CFR 122.26(c)(1) if their discharge is not covered under a general permit provided for in [NEW RULE VI, MAR Notice No. 17-174] or another MPDES permit. Dischargers of storm water associated with construction activity are exempt from the application requirements of ARM 17.30.1322(7) and 40 CFR 122.26(c)(1)(i).

(11) through (11)(b)(iii) remain the same, but are renumbered (13) through (13)(b)(iii).

(c) An extension under federal Clean Water Act section 301(i)(2) of the statutory deadlines in section 301(b)(1)(A) or (b)(1)(C) of the federal Clean Water Act based on delay in completion of a POTW into which the source is to discharge must have been requested on or before June 26, 1978, or 180 days after the relevant POTW requested an extension under ~~(12)~~ (14)(b) of this rule, whichever is later, but in no event may this date have been later than January 30, 1988. The request must explain how the requirements of 40 CFR Part 125, subpart J, have been met.

(d) through (f) remain the same.

(12) through (12)(b) remain the same, but are renumbered (14) through (14)(b).

~~(13)(a)(15)~~ (13) Notwithstanding the time requirements in ~~(11)~~ (14) and ~~(12)~~ (14): ~~of this rule,~~

(a) the department may notify a permit applicant before a draft permit is issued under ARM 17.30.1370 that the draft permit will likely contain limitations ~~which are eligible~~ eligibility for variances. In the notice the department may

require that the applicant, as a condition of consideration of any ~~potential~~ variance request, ~~to submit a request explaining~~ an explanation of how the requirements of 40 CFR Part 125 applicable to the variance have been met. ~~and~~ The department may require ~~its~~ submission of the explanation within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations ~~which~~ that may become effective upon final grant of the variance. ~~; and~~

(b) A a discharger who cannot file a timely complete request required under ~~(11)~~ (13)(b)(ii) or (iii) of this rule may request an extension. The extension may be granted or denied at the discretion of the department. Extensions ~~shall~~ may not be ~~no~~ more than six months in duration.

(14) through (15)(e) remain the same, but are renumbered (16) through (17)(e).

(f) 40 CFR Part 125, which is a series of federal agency rules setting forth criteria and standards for the national pollutant discharge elimination system (NPDES), specifically including criteria for extending compliance dates for facilities installing innovative technology (Subpart C), criteria for determining the availability of a variance based on fundamentally different factors (FDF) (Subpart D), and criteria for extending compliance dates for achieving effluent limitations; ~~and~~

(g) 40 CFR 403.5(c)(i) (July 1, 1991), which requires POTWs to develop and enforce specific limits to prevent certain discharges. ~~; and~~

(h) 40 CFR 122.26(c)(1), which states requirements for individual permit applications for storm water discharges.

(h) remains the same, but is renumbered (i).

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: The proposed amendments to ARM 17.30.1322 delete provisions regarding Group I and Group II storm water discharges. These provisions are proposed to be deleted because the terms are no longer used in either the federal or state storm water rules. Deleting these provisions is necessary to eliminate superfluous rule language.

The proposed amendments also identify which storm water discharges would be permitted under the new subchapter 11 and which would be subject to permitting under subchapter 13. The amendments require applicants for individual, as opposed to general, permit coverage to follow application procedures set

out in federal rules at 40 CFR 122.26(c)(1). These amendments are necessary to inform the regulated community of the applicable procedures for issuing MPDES permits for storm water discharges.

17.30.1323 SIGNATORIES TO PERMIT APPLICATIONS AND REPORTS

(1) through (1)(c)(ii) remain the same.

(2) All reports required by permits, and other information requested by the department, ~~and all permit applications submitted for group II storm water discharges under ARM 17.30.1332~~ must be signed by a person described in (1) ~~of this rule~~ or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(a) through (4) remain the same.

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: The proposed amendments to ARM 17.30.1323 delete provisions regarding Group II storm water discharges. These provisions are proposed to be deleted because the "Group II" terminology is no longer used in either the federal or state storm water rules. In addition, the federal rules do not allow for a "duly authorized representative" to submit storm water permit applications or notices of intent. Deleting these provisions is necessary to eliminate superfluous rule language and to be consistent with federal regulations.

17.30.1341 GENERAL PERMITS (1) The department may issue MPDES general permits for the following categories of point sources which the board has determined are appropriate for general permitting under the criteria listed in 40 CFR 122.28 as stated in [NEW RULE III, MAR Notice No. 17-174]:

(a) through (i) remain the same.

(j) ~~stormwater point sources~~ source discharges of storm water;

(k) through (s) remain the same.

(2) Although ~~general~~ MPDES general permits may be issued for a category of point sources located throughout the state, they may also be restricted to more limited geographical areas.

(3) Prior to issuing a ~~general~~ MPDES general permit, the department shall prepare a public notice which includes the equivalent of information listed in ARM 17.30.1372(6) and shall publish the same as follows:

(a) through (d) remain the same.

(4) A person owning or proposing to operate a point source who wishes to operate under a ~~general~~ MPDES general

permit shall complete a standard MPDES application or notice of intent form available from the department for the particular general permit. Except for notices of intent submitted for storm water discharges associated with construction activity as stated in [NEW RULE VIII, MAR Notice No. 17-174], ~~The~~ the department shall, within 30 days of receiving a completed application, either issue to the applicant an authorization to operate under the ~~general~~ MPDES general permit, or shall notify the applicant that the source does not qualify for authorization under a ~~general~~ MPDES general permit, citing one or more of the following reasons as the basis for denial:

(a) through (a)(vii) remain the same.

(b) the discharge is different in degree or nature from discharges reasonably expected from sources or activities within the category described in the ~~general~~ MPDES general permit;

(c) remains the same.

(d) the discharge sought to be authorized under a ~~general~~ MPDES general permit is also included within an application or is subject to review under the Major Facility Siting Act, 75-20-101, et seq., MCA;

(e) remains the same.

(5) Where authorization to operate under a ~~general~~ MPDES general permit is denied, or a notice of intent under [NEW RULE VIII, MAR Notice No. 17-174] is not applicable, the department shall proceed, unless the application or notice of intent is withdrawn, to process the application or notice of intent through the ~~as an~~ individual MPDES permit requirements under this subchapter.

(6) Every ~~general~~ MPDES general permit must have a fixed term not to exceed five years. Except as provided in (10) ~~of this rule~~, every authorization to operate under a ~~general~~ MPDES general permit expires at the same time the ~~general~~ MPDES general permit expires.

(7) Where authorization to operate under a ~~general~~ MPDES general permit is issued to, or a notice of intent received from, a point source covered by an individual MPDES permit, the department shall, upon issuance of the authorization to operate or receipt of the notice of intent under the ~~general~~ MPDES general permit, terminate the individual MPDES permit for that point source.

(8) Any person authorized or eligible to operate under a ~~general~~ MPDES general permit may at any time apply for an individual MPDES permit according to the procedures in this subchapter. Upon issuance of the individual MPDES permit, the department shall terminate any ~~general~~ MPDES general permit authorization or notice of intent held by such person.

(9) The department, on its own initiative or upon the petition of any interested person, may modify, suspend, or revoke in whole or in part a ~~general~~ MPDES general permit or an authorization or notice of intent to operate under a ~~general~~ MPDES general permit during its term in accordance with the provisions of ARM 17.30.1361 for any cause listed in ARM 17.30.1361 or for any of the following causes:

(a) the approval of a water quality management plan containing requirements applicable to point sources covered in the ~~general~~ MPDES general permit;

(b) through (d)(iv) remain the same.

(10) The department may reissue an authorization to operate under a ~~general~~ MPDES general permit provided that the requirements for reissuance of MPDES permits specified in ARM 17.30.1322 are met.

(11) The department shall maintain and make available to the public a register of all sources and activities authorized to operate, or with notices of intent to discharge, under each ~~general~~ MPDES general permit including the location of such sources and activities, and shall provide copies of such registers upon request.

(12) through (12)(e) remain the same.

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: As required by 75-5-401(1)(c), MCA, storm water discharges associated with construction activity must obtain coverage under a general permit through a notice of intent (NOI) process rather than through an application/authorization process. Under the NOI process, coverage under the general permit is effective upon receipt by the department of a complete NOI package, which includes fees and a storm water pollution prevention plan. The NOI process is necessary to provide a streamlined application process for construction activity, in which numerous similar sites require permits each season.

The proposed amendments to ARM 17.30.1341 add provisions to the general permit rule that are necessary to facilitate the NOI process for storm water discharges associated with construction activity.

17.30.1351 REQUIREMENTS FOR RECORDING AND REPORTING OF MONITORING RESULTS (1) All permits must specify:

(1) through (3) remain the same, but are renumbered (a) through (c).

(2) The department may require monitoring of storm water discharges at a facility or activity covered under an MPDES general permit. Such requirements may include storm water sampling, analytical testing, evaluation of monitoring results, recording, and reporting. Monitoring requirements identified by the department must be stated in the MPDES general permit, except that the department may require a discharger to comply with monitoring requirements in addition to those in the general permit.

(3) For storm water discharges that are associated with industrial, mining, oil and gas, and construction activity and that are subject to an effluent limitation guideline, the department shall establish case-by-case requirements to report monitoring results. Such reporting must have a frequency dependent on the nature and effect of the discharge, but the frequency may in no case be less than once a year.

(4) For storm water discharges that are associated with industrial, mining, oil and gas, and construction activity with construction-related disturbance of five acres or more of total land area and that are not subject to an effluent limitation guideline, the department shall establish case-by-case requirements to report monitoring results.

(a) Such reporting must have a frequency dependent on the nature and effect of the discharge, and the permit for the discharge must, at a minimum, require that the discharger:

(i) conduct an annual inspection of the facility site to identify areas contributing to the regulated storm water discharge and to evaluate whether measures to reduce pollutant loadings identified in a storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit;

(ii) maintain for a period of three years a record summarizing the results of inspections; and

(iii) certify that the facility is in compliance with the plan and the permit, or identify any incidents of non-compliance.

(b) Reports and certifications required under this rule must be signed in accordance with ARM 17.30.1323.

(c) Permits for storm water discharges from inactive mining operations may, if annual inspections are impracticable, require certification once every three years by a registered professional engineer that the facility is in compliance with the permit, or alternative requirements.

(5) Permits that do not require the submittal of monitoring result reports at least annually must require that the permittee report at least annually all instances of noncompliance not reported under ARM 17.30.1342(12).

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-401, MCA

REASON: The proposed amendments to ARM 17.30.1351 set out monitoring and reporting requirements for permittees authorized under storm water discharge permits. These requirements are based on federal law, and are necessary to allow the department to monitor compliance with the terms of the permits and to ensure that storm water discharges do not contribute to pollution of surface water.

17.30.1361 MODIFICATION OR REVOCATION AND REISSUANCE OF PERMITS (1) through (2)(m) remain the same.

(n) for small municipal separate storm sewer systems, to include effluent limitations requiring implementation of minimum control measures as specified in [NEW RULE VII(6), MAR Notice No. 17-174] if:

(i) the permit does not include such measures based upon the determination that another entity was responsible for implementation of the requirements; and

(ii) the other entity fails to implement measures that satisfy the requirements;

(n) and (o) remain the same, but are renumbered (o) and (p).

(3) through (4)(f) remain the same.

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-401, MCA

REASON: The proposed amendments to ARM 17.30.1361 add a new basis for modification of permits, based on federal rules. The new basis applies to small municipal separate storm sewer systems (MS4s), and would allow modification of a permit to require implementation of a minimum control measure when one is lacking because another entity was responsible for the control and failed to implement it. The amendments are necessary to ensure that all MS4s have appropriate control measures to prevent storm water discharges from contributing to pollution of surface water.

4. ARM 17.30.1332 which can be found on page 17-2945 of the Administrative Rules of Montana, is proposed to be repealed.

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-401, MCA

REASON: ARM 17.30.1332 is proposed to be repealed because, pursuant to MAR Notice No. 17-174, the provisions of ARM 17.30.1332 would be moved to the new subchapter 11. Repeal is necessary to avoid duplication of rule language.

5. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana 59620-0901, faxed to (406) 444-4386 or emailed to the Board Secretary at ber@state.mt.us and must be received no later than 5:00 p.m., November 27, 2002. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. Thomas Bowe, attorney for the Board, has been designated to preside over and conduct the hearing.

7. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA, underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to the Board Secretary at ber@state.mt.us or may be made by completing a request form at any rules hearing held by the Board.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

BOARD OF ENVIRONMENTAL REVIEW

By: Joseph W. Russell
JOSEPH W. RUSSELL, M.P.H.,
Chairman

Reviewed by:

James M. Madden
JAMES M. MADDEN, Rule Reviewer

Certified to the Secretary of State, October 7, 2002.